

REMARKS

Claims 6 to 9, and 16 to 54 are in the application. Claims 16 and 34 have been amended. No new matter is believed added. Applicants have amended the related application information originally added to the specification from their Transmittal Letter.

Rejection under 35 USC §112

Claims 6 to 9, and 16 to 54 are rejected under 35 USC §112, second paragraph as being indefinite.

Claims 7, 16 to 18, 30 to 39, 42, 53 and 54 are also rejected under 35 USC §112, second paragraph as being indefinite. Applicants respectfully traverses these rejections.

The phrase “and clavulanate” was inadvertently left in the claims upon amendment in the prior response. This phrase has been deleted from claims 16 and 34 and should therefore remove the §112 rejection to the claims.

The Examiner comments that the claim language in “independent claims 16 and 34 is identical”. This is believed incorrect. Claim 16 utilizes the term “sustained release” whereas claim 34 uses the term “delayed release”. Use of both terms in independent claims is consistent with those allowed in parent application 09/640,823, now US Patent 6,358,528.

The specification, page 1, lines 11 to 15 describes “sustained” as being active material which is “released gradually from the tablet”, whereas “delayed” is described as material wherein the “release begins or the rate of release increases after an initial delay”. The release in “delayed” may or may not be gradual, but it is delayed. Consequently it is not believed that the claims are identical.

In view of these remarks and amendments, reconsideration and withdrawal of the rejection to the claims under 35 USC §112 is respectfully requested.

CONCLUSION

Should the Examiner have any questions or wish to discuss any aspect of this case, the Examiner is encouraged to call the undersigned at the number below. It is

not believed that this paper should cause any additional fees or charges to be required, other than expressly provided for already. However, if this is not the case the Commissioner is hereby authorized to charge Deposit Account 19-2570 accordingly.

Respectfully submitted

A handwritten signature in dark ink, appearing to read 'Dara L. Dinner', with a long horizontal flourish extending to the right.

Dara L. Dinner
Attorney for Applicants
Registration No. 33,680

SMITHKLINE BEECHAM CORPORATION
Corporate Intellectual Property-US UW2220
P.O. Box 1539
King of Prussia, PA 19406-0939
Telephone: (610)270-5017
Facsimile: (610)270-5090
919X1D2oa1.doc